

1
2
3
4
5
6
7
8
9 UNITED STATES DISTRICT COURT
10 WESTERN DISTRICT OF WASHINGTON
11 AT TACOMA

12 DAVID BEACHEM ,

13 Plaintiff,

14 v.

15 JACK BRAMBAUGH.

16 Defendant.

CASE NO. 11-5435 RJB

ORDER ADOPTING A REPORT
AND RECOMMENDATION

17 This matter comes before the Court on the Report and Recommendation of the
18 Honorable J. Richard Creatura, United States Magistrate Judge, dated July 11, 2011.
19 Dkt. 10. The Plaintiff has not filed objections. The Court has considered the Report and
20 Recommendation and the remaining record, and hereby adopts the Amended Report and
21 Recommendation for the reasons stated herein.

22 The Magistrate Judge recommends that Plaintiff's action be dismissed with
23 prejudice for failure to state a claim. Dkt. 10 pp. 1-3. As detailed in the Report and

1 Recommendation, Plaintiff has been provided guidance and an opportunity to cure the
2 defects in his complaint. Plaintiff has failed to correct the deficiencies and the complaint
3 is frivolous. *Id.*

4 The Court having reviewed the Report and Recommendation of the Hon. J.
5 Richard Creatura, United States Magistrate Judge, and the remaining record, does hereby
6 find and **ORDER**:

(1) The Court adopts the Report and Recommendation; and

(2) This action is **DISMISSED WITH PREJUDICE** for failure to state a claim. Defendant's alleged use of abusive language, no matter how offensive, does not rise to the level of a constitutional violation. This dismissal counts as a strike pursuant to 28 U.S.C. § 1915 (e)(2). *In forma pauperis* status is revoked for purposes of appeal.

DATED this 12th day of August, 2011.

Robert F. Bryan

ROBERT J. BRYAN
United States District Judge